

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

LEGAL RIGHTS AND REMEDIES

(Office for the Prevention of Domestic Violence)

The Police can:

- Assist victims in finding a safe place away from the violence
- Inform victims about how the court can help them get an Order of Protection, child support, custody, or visitation
- Assist victims in getting medical care for injuries
- Assist victims in getting necessary belongings from their home
- Provide victims with copies of police reports about the violence
- Help victims file a complaint in Criminal Court and direct them to their local Criminal and Family Courts

The Courts can:

- Assist victims in securing an Order of Protection.

An Order of Protection is a document issued by a court that may help protect you from harassment or abuse. In an Order of Protection, a judge can set limits on your partner's, or another person's, behavior. Among other things, judges in all courts (Criminal, Family, and Supreme) can:

- Order your partner, or another person, to leave and stay away from your home, your workplace, and your family (this is called a "stay-away" provision)
- Order your partner to stop abusing you, your children, and your pets
- Order your partner to have no contact with you – including no phone calls, letters, emails, or messages through other people

Once an Order of Protection is issued, only a judge can change it. If the Order includes a stay-away provision and your partner comes to your house, they are violating the Order and should be arrested. You may feel there is a good reason for them to be at your house, such as making a home repair or being there for a child's birthday, but having them there would put them in violation of the Order. If you want changes to an Order, you must request them from the court.

Orders of Protection are valid in any state or territory in the country, no matter where they were issued. This is sometimes called "Full Faith and Credit." If the Order has not expired and has the correct names of the people involved, the police should consider it valid and enforce it. This is true even if you got it in a different state or territory from the one you are in.

Family Court: Is a civil court with the goal of protecting victims and their families. Family Court judges can issue an Order of Protection and make decisions about custody, visitation, and/or child support. A judge may order the abuser to pay for expenses related to the abuse, such as medical care and property damage.

You can go to Family Court if you:

- Are legally married or divorced from the abuser;
- Are related to the abuser by blood; or
- Have a child in common with the abuser.

Criminal Court: Regardless of the relationship between you and the abuser, a Criminal Court can issue an Order of Protection after the abuser has been charged with a crime. In some locations, the Criminal Court may be your Town, Village, or County Court. The police or District Attorney may request for an Order of Protection from the Court, or you may make the request yourself. Like in Family Court, this will be a Temporary Order until the case is over. This Temporary Order often extends from one court date to the next. A permanent Criminal Order of Protection can be issued upon disposition of the case for a period of 2 to 8 years, based on the crime of conviction.

Supreme Court: Is also a civil court. If you are getting a divorce, separation, or annulment, you can request an Order of Protection through your attorney at any time before the trial or settlement is final. When an Order of Protection is part of a divorce order from Supreme Court, it is permanent and will not expire. Changes in a Supreme Court Order can be difficult and expensive. You should request that the Order include a provision that allows for future changes to be made in Family Court.

New York Law states that: "If you are the victim of domestic violence you may request that the officer assist in providing for your safety and that of your children including providing information on how to obtain a temporary order of protection. You may also request that the officer assist you in obtaining your essential personal effects and locating and taking you, or assist in making arrangements to take you and your children to a safe place within such officer's jurisdiction including, but not limited to a domestic violence program, a family member's or a friend's residence, or a similar place of safety. When the officer's jurisdiction is more than a single county, you may ask the officer to take you, or make arrangements to take you and your children to a place of safety in the county where the incident occurred. If you or your children are in need of medical treatment, you have the right to request that the officer assist you in obtaining such medical treatment. You may request a copy of the incident report at no cost from the law enforcement agency. You have the right to see legal counsel of your own choosing and if you proceed in Family Court and it is determined that you cannot afford an attorney, one must be appointed to represent you without cost to you. You may ask the District Attorney or law enforcement agency to file a criminal complaint. You also have the right to file a petition in the Family Court when a family offense has been committed against you. You have the right to have your petition and request an order of protection filed on the same day you appear in court, and such request must be heard that same day or the next day court is in session.

Either court may issue an order of protection from conduct constituting a family offense, which could include, among other provisions, an order for the respondent or defendant to stay away from you and your children.

The Family Court may also order payment of temporary child support and award temporary custody of your children. If the Family Court is not in session, you may seek immediate assistance from the Criminal Court in obtaining an order of protection. The forms you need to obtain an order of protection are available from the Family Court and the local Criminal Court.

The resources available to this community for information relating to domestic violence, treatment of injuries and places of safety and shelter can be accessed by calling the following 800 numbers. Filing a false criminal complaint or a family court petition containing allegations that are knowingly false is a crime."

New York State Domestic Violence and Sexual Violence Hotline

1-800-942-6906